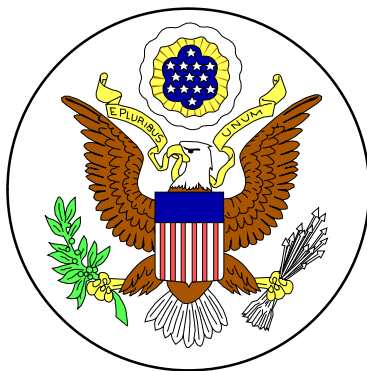


JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

**LEONIDAS RALPH MECHAM, DIRECTOR
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**



BEFORE

**THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC
BUILDINGS AND EMERGENCY MANAGEMENT**

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

ON

**THE JUDICIARY'S ABILITY TO PAY FOR CURRENT AND FUTURE
SPACE NEEDS**

June 21, 2005

STATEMENT OF LEONIDAS RALPH MECHAM, DIRECTOR
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
BEFORE THE SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY
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INTRODUCTION

Chairman Shuster, Congresswoman Norton, and members of the Subcommittee, I appear before you this afternoon in my role as Secretary of the Judicial Conference of the United States to discuss the funding crisis confronting the Judicial Branch and to request that the Committee work with us constructively to provide rent relief for the federal courts.

This Committee has been a longtime friend of the judiciary. During the 20 years I have been Director of the Administrative Office, you have worked with us to authorize the replacement of an outdated and inefficient inventory of federal courthouses that, in many instances, lacked adequate security. We have endeavored together to develop design standards for new courthouses that are efficient, appropriate, and cost-effective. These standards have now been adopted by judiciaries throughout the United States and around the world. We have also worked together to develop a long-range facilities planning system that everyone now accepts as credible and reliable. For example, GAO reported to this Committee in a letter dated January 25, 2001, that “since 1994, AOC [Administrative Office of the U.S. Courts] has continued its efforts to improve the long-range planning process and has made progress in implementing our six previous recommendations... In addition to its efforts to implement our recommendations, AOC is currently considering how to best implement other improvements, including some that were suggested by E&Y [Ernst and Young], to the long-range planning process, such as using more advanced techniques to forecast caseloads.”¹

FUNDING CRISIS IN THE FEDERAL COURTS

The judiciary has been in the midst of an acute funding crisis since fiscal year 2004, when its final appropriation was insufficient to support onboard court staff. At a time when they faced a record number of criminal defendants; record appeals, civil, probation and pretrial caseloads; and a near record caseload in the bankruptcy system, as well as additional requirements mandated by Congress, the courts experienced a 6 percent reduction in personnel nationwide, losing 1,350 employees in appellate, bankruptcy and district courts and probation and pretrial services offices between October 2003 and October 2004. Because of the delay in passing the FY 2005 omnibus appropriations bill, the judiciary lost an additional 450 staff down to a low point of 1,800, or

¹Letter on study to follow-up on GAO’s 1993 report entitled *Federal Judiciary Space: Long-Range Planning Process Needs Revision* (GGD-93-132, Sept. 28, 1993).

8 percent below FY 2003 levels.

Even with the heroic efforts of the remaining court staff, some degradation in service is already occurring. Lawyers and the public are experiencing long lines as some clerks' offices are closing early. Payments of fees to jurors and for victim restitution are being delayed because of staffing reductions. And, some probation offices that have downsized are reporting an increase in new crimes attributed to offenders under their supervision.

How did this predicament occur? As recently as fiscal year 2003, congressional appropriations were sufficient to allow the courts to maintain staffing levels (no growth for additional workload) and pay GSA rent bills. This changed abruptly in fiscal year 2004. Heading into conference on the fiscal year 2004 appropriations bill, it appeared that the judiciary would be spared draconian cuts. With the 5.7 percent increase originally agreed to by the conferees, the judiciary was poised to maintain fiscal year 2003 staffing levels, although not to acquire staff adequate for our ever-burgeoning caseloads. This outlook changed with the across-the-board 1 percent reduction that was included as part of the omnibus appropriations package.

A 1 percent reduction may not matter a great deal to most federal agencies and departments. But unlike executive branch departments or agencies, the judiciary does not have projects or programs that can be eliminated or cut to absorb budget shortfalls. Our appropriation funds only case-related functions to handle workload which we have no control over. Although we reduced other costs wherever possible, the ultimate result of the 1 percent across-the-board reduction was the loss of 1,350 valued employees, some through normal attrition who were not backfilled, some through buyouts and early retirements, but 285 had to be fired. Since then, as noted, the total loss had risen to 1,800. In order to explain better how court needs are funded, Attachment 1 is an overview of how the judiciary's budget is formulated.

In 2005, the judiciary worked hard to make Congress aware of the problem created by the 2004 budget cuts in the hope that our fiscal year 2005 appropriation would restore much of what was lost. While the 4.3 percent fiscal year 2005 increase for our main Salaries and Expenses account was not everything we had sought, we recognized the constraints under which Congress was operating. Although the more than 1 percent across-the-board reduction in our 2005 appropriation led to additional belt-tightening for the courts, the final funding level was sufficient to halt any further loss of staff. It also allowed about half of the positions lost by the courts in fiscal year 2004 to be restored, but did not permit hiring of staff to address the workload increases. Due to the uncertainty over the fiscal year 2006 budget, many courts have been reluctant to fill vacant positions to restore lost staff for fear they will have to turn around and terminate them next year. In addition, ongoing, multi-year shortages in non-salary areas have prompted courts to shift salary funding to cover these expenses. This is truly a case of doing more with less, and it has adversely impacted court operations.

Compounding our funding crisis is the judiciary's ever expanding workload. Recent enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act and the Class Action Fairness Act, plus the additional resources provided in the fiscal year 2005 supplemental

appropriations for homeland security and border enforcement efforts, as well as the Supreme Court's twin majority decisions in *United States v. Booker* and *United States v. Fanfan*, all will result in significant workload increases for the judiciary.

I am hopeful you will recognize that our current financial predicament is not one of our own making. It is the result of the changed priorities of the federal budget, including the effects of two wars and other domestic fiscal constraints, that provide less growth in funding for the judiciary, which we, like other affected segments of the government, must now work within. To work within these constraints we must reduce our costs of operations, which we are making every effort to do. As described below, we have initiated a major cost containment effort that includes a moratorium on the construction of new court facilities. However, one area that continues to elude our cost containment efforts is GSA rent, which under current law the judiciary must pay to GSA in full as a first charge against its budget. We are asking the Congress to provide sufficient appropriations to the judiciary to allow us to fund both our staffing needs and GSA rent. If Congress is unable to do so, then a choice must be made as it was in FY 2004 – either reduce staff or reduce rent. On June 15, 2005, the House Appropriations Subcommittee on Transportation, Treasury, HUD, and the Judiciary approved a 5.4 percent increase for the judiciary's FY 2006 Salaries and Expenses appropriations which includes \$980 million to pay rent to GSA. However, if by conference time our final enacted appropriation for FY 2006 is reduced to the approximately 4 percent level of increase of the past two years, or lower, this could compel the judiciary to cut hundreds, if not thousands, of employees over the coming year, while still having to make full rental payments to GSA. These reductions in staff would come at a time of continuing workload increases in the courts associated with homeland security (enhanced illegal immigration enforcement), criminal caseload, probation supervision, Booker/Fanfan, etc. The courts will not be able to meet their statutory responsibilities if staffing continues to decline and workload continues to grow. We are hopeful that rent relief can be achieved so that we might retain the staff needed to handle the courts' Constitutional and statutory responsibilities.

THE JUDICIARY'S EFFORTS TO CONTAIN COSTS

Of course, the judiciary does not operate in a vacuum. We are sensitive to the constrained budget environment facing all of government, and we are doing our part to contain costs. In fact, I believe we are leading the way. In that vein, in March 2004, alarmed by the fiscal crisis facing the judiciary, the Chief Justice charged the Executive Committee of the Judicial Conference with conducting a comprehensive review of the policies and practices, operating procedures and customs that have the greatest impact on the judiciary's costs, and with developing an integrated strategy for controlling these costs.

The Executive Committee enlisted the assistance of chief judges, court staff, advisory groups, Conference committees, and the AO staff to scrutinize all spending categories, with the focus on whether expenditures – even though needed or desirable – are affordable in the current budget climate. Outside of mandatory spending requirements for Article III and bankruptcy judges' pay and judge-related retirement trust fund contributions, no program or expenditure was

considered off-the-table during this review. Hundreds of ideas were generated and considered. “Quick hitting” action items were identified for immediate implementation, as well as long-term cost-containment ideas for 2005 and beyond.

The initial phase of this massive effort was completed in just five months. Thousands of staff hours were dedicated to this initiative and involved hundreds of judges and court staff across the country. In September 2004, the Judicial Conference approved a long-term cost-containment strategy that includes six major components: (1) space and facilities cost control, to which Judge Roth and I referred earlier; (2) work process efficiency; (3) compensation review; (4) effective use of technology; (5) defender services, court security, law enforcement, and other program cost-management initiatives; and (6) fee adjustments. Implementing this cost-control strategy is a top priority for the Judicial Conference.

GSA RENT COSTS

Central to the discussion of the judiciary’s funding crisis is the amount of rent the judiciary pays to GSA each year. Eighty-four percent of the judiciary’s total Salaries and Expenses budget goes to support court personnel and the facilities in which they work. As indicated in Attachment 2, total rental payments account for 22 percent of the main courts’ Salaries and Expenses account which includes rent for GSA. Rent payments to GSA from the courts’ Salaries and Expenses account have grown from \$133 million in 1986 to \$921.5 million (est.) in fiscal year 2005, almost a 600 percent increase. During that same period, the amount of space provided to the judiciary has grown only 150 percent, from 11.0 million usable square feet to an estimated 27.4 million usable square feet. Including current facilities and new court buildings already under construction, under current pricing policies the judiciary will have to pay about \$1.2 billion in rent to GSA by fiscal year 2009, consuming nearly one-quarter of the projected budget for the courts’ Salaries and Expenses account.

The judiciary pays more rent in dollars to GSA than any other federal agency except the Department of Justice which pays only slightly more. As a percentage of budget, the Justice Department pays only 3 percent while the courts must pay 22 percent. Our work is space intensive by its very nature – we have 459 statutory places of holding court. But as a percentage of the Salaries and Expenses appropriation, the courts pay seven times more for rent than does Justice. Yet, GSA rent only accounts for less than 1 percent of major Executive Branch agency budgets. No other entity in the federal government pays such a high percentage of its budget to GSA as shown in Attachment 3. In percentage terms, the courts pay 115 times more in rent to GSA than the average Executive Branch department, and 39 times more than the Legislative Branch.

Legislative Branch rent payments to GSA are so low because, for the most part, Congress manages its own space through the Architect of the Capitol, except for some district offices rented from GSA in federal buildings. Of course, the Architect charges no rent to Congress. We know Congressmen and Senators who have moved out of GSA-controlled space over the years because it is too expensive and they can find cheaper offices in the private sector. The

Department of Defense does not pay rent to GSA for the Pentagon or its military bases. The Treasury Department does not pay rent on the main Treasury building or on its mints. Likewise, the Federal Reserve Board and many quasi-federal agencies do not pay rent to GSA. There is no rent paid to GSA on federal prisons, embassies, NIH facilities, VA hospitals, EPA labs, or national parks and national forest facilities. These federal organizations have complete control over the amount of money they dedicate to real estate activities. Attachment 4 identifies those agencies that control their own space. The courts, however, must pay rent forever on all federal court buildings – even those fully amortized and paid for, not just once, but often many times over.

While the judiciary has taken steps of its own to control its rent bill by undertaking a comprehensive review of its courthouse construction program, including a two-year moratorium on new construction projects, it is the rent we are paying for existing facilities and will pay for those already under construction, that is exacerbating our budget woes. As non-defense and non-homeland security discretionary funding is sharply constrained and reduced, we are deeply concerned that the Congress will not be able to support fully the resource needs of the judiciary – at which point the judiciary will be required once again to pay its GSA rent bill in full at the expense of staffing in the federal courts. This is what has happened in recent years culminating in the significant downsizing of court staff beginning in fiscal year 2004 that I described earlier. Our final appropriation was insufficient to support current services in that year. The rent bill was paid in full to GSA while the judiciary had to cut funds for operating expenses and 6 percent of its onboard staff. Moreover, rental payments to GSA by the judiciary were exempted from the across-the-boards imposed on the judiciary which thus took a double hit. We have been advised by the Office of Management and Budget that no Executive Branch department or agency, including GSA, has been forced to make such drastic staff cuts. Rental payments for new buildings, coupled with the inevitable inflationary increases on existing buildings, are expected to raise the judiciary's rental bill by about \$74 million a year, an average of 6 to 8 percent over the next four years. If our overall, annual appropriation increases are held to the recent 4 percent level or lower, this could compel the judiciary to cut hundreds, if not thousands, of employees over the coming years, while still having to make full rental payments to GSA. Reductions of such a magnitude to court support staff would imperil the survival of the federal court system.

The effect of these payments to GSA, along with the tightening of the federal budget, is that we must either continue to reduce court staff and further jeopardize our ability to deliver justice, or we must ask the Congress and the Executive Branch to reexamine how rent – the single largest component of our operating expenses other than personnel costs--is computed.

It is clear that the Federal Buildings Fund process implemented in 1975 with its ever-increasing annual rental payments is fatally flawed as it is applied to the judicial branch. At least 27 other federal departments and agencies have been exempted from GSA contracts and rent. Major portions of other agencies likewise are exempt. They control their own building programs which are funded from annual appropriations.

STEPS TAKEN THUS FAR

Having identified the significant impact GSA rent has on our constrained budget, we attempted to work with GSA and OMB to address our concerns. We have exhausted every administrative remedy available to us, and our only recourse is to request help from the Congress.

Our most recent rent cost containment efforts began about 14 months ago. At that time we immediately froze below prospectus-level space requests and by September 2004, as I mentioned previously in this statement, we virtually abolished plans for any major projects that had not received an appropriation. We tried to work out a solution with GSA that would have given us significant long-term rent relief, but what GSA offered was only a \$20 million reduction that we believe would have ended up costing the taxpayers an additional \$12 million in the long run because of the way certain components of the rental charges would have been recomputed. None of the solutions offered by GSA would have significant long-term savings. Therefore, in early December 2004, Judge Jane Roth (the Chair of the Judicial Conference's Security and Facilities Committee), Judge Carolyn Dineen King (the Chair of the Judicial Conference's Executive Committee), and I met with GSA Administrator Stephen A. Perry to seek a waiver of certain rental charges, pursuant to his statutory authority.² Our request of GSA was to exempt the judiciary from those rental payments that exceed GSA's actual cost to operate, maintain and lease federal court facilities, a total reduction of \$483 million from our estimated rent payments. Almost three months later, we were told that our request had been rejected. We also approached OMB Director Joshua Bolten, but to date have been provided no new information.

As you can see, at this point, we have been offered no hope for significant administrative relief. Therefore, we welcome the Congress' assistance in reexamining the way rent is calculated for the judiciary. In addition to this hearing, you are probably aware that the Senate Judiciary Committee, which has a special understanding of the needs of the federal courts, has expressed its concerns to the Administration about the judiciary's space rental bill. I will provide a copy of their letter to GSA Administrator Perry to the Committee.

CURRENT PRICING PRACTICES

Mr. Chairman, if I may, I would like to share with you some problems and concerns that we have uncovered recently concerning GSA's current pricing policies and procedures for court facilities:

- GSA has adopted a pricing policy that allows it to add on local real estate taxes in calculating rental charges for tenants within federally-owned facilities despite the fact that the federal government is exempted from incurring such charges. Of course, GSA pays no such taxes, but the judiciary, in effect, is forced to pay them. We have asked GSA how much of our rental payment is comprised of these costs

²41 C.F.R. 102-85.155

which must amount to tens of millions of dollars annually.

- In at least one city, the rental rates per usable square foot for a federally-owned court facility were almost double the rates charged federal tenants for comparable commercially-leased space, an overcharge of \$900,000 annually. This could be happening elsewhere as well.
- Just to find out the basis for the charges has proven to be a real challenge for the judiciary. One court had to file a Freedom of Information Act request to obtain the back-up documents to its rental charges. The court was told by GSA that the Freedom of Information Act does not apply to this information. In fact, I understand that GSA has a national policy in place that prohibits the sharing of actual back-up documents with federal agencies.
- In Providence, Rhode Island, the court – not GSA – worked out an agreement wherein the city donated the parking lot behind the courthouse to GSA. The lot cost GSA one dollar. GSA is charging the judiciary \$11,000 in rent per year on the parking lot, even though there was no capital outlay from GSA's Federal Buildings Fund. Considering the fact that the judiciary will occupy the courthouse for at least another 50 years, well over \$500,000 of taxpayer money will be sent to GSA for a parking lot that only cost the taxpayers one dollar. The GSA regional office refused to waive the rent, stating in a January 21, 2002, letter to the Administrative Office that "GSA is required by law to charge commercially-equivalent rates for all space categories, including parking."
- Another example occurred in Phoenix, where GSA insisted upon an extensive atrium that the judiciary felt was not a suitable, or cost-effective element to include in the new facility. After discussions with GSA, the judiciary agreed to the atrium as long as the judiciary was not charged rent for that space. Despite this agreement, GSA has always included rent charges for the atrium space in the judiciary's monthly rent bill.
- In yet another example, 14,000 square feet of attic space in Utica – accessible only through the ceiling by ladder – was included in the common area rent charges, when the space should have been classified as "unoccupiable." And within the Syracuse facility, GSA included a 5,000 square foot driveway ramp leading into the underground parking area in the rent charges – a miscalculation identified by the Clerk of Court.

Mr. Chairman, we believe this situation has gotten out of hand, and we seek your assistance in obtaining rent relief for the federal courts. The current arrangement gives GSA every incentive to maximize revenues—rent—not to operate and maintain public buildings efficiently. And, the current arrangement gives GSA the monopolistic advantage to pursue higher and higher rents without the restraint of competition. Our principal concern with the present rent

arrangement can be simply stated: GSA charges the judiciary a rent to recapture original costs of courthouses that the Congress has already paid for from FY 1990 through FY 2004 through direct appropriations into the Federal Buildings Fund.

The judiciary is also forced to pay for buildings that have been fully amortized – not only once, but as many as four or five or more times. The judiciary is paying a component of its rent in perpetuity for a capital investment on courthouses that were built before 1980 (many of which the Federal Buildings Fund "inherited" when it was implemented in 1975, and for which the Fund made no investment) and buildings built since 1990 for which the Congress appropriated money into the Fund for their construction. The taxpayers paid cash for these courthouses and current GSA pricing policies provide a perpetual "return on investment" that was never made.

As you know, when the Federal Buildings Fund (FBF) was established in 1972, it was supposed to accumulate tax monies for the acquisition, maintenance, and operation of federal buildings under GSA responsibility; to segregate the buildings funds from other GSA funds; and to encourage the prudent use of space by GSA tenants, since the rental payments into the Fund were to come from tenants' yearly appropriations. As originally conceived by GSA, the FBF was to be a revolving fund, with any excess rental income over and above yearly expenses accumulating over time to be used for major renovations and modernizations, new construction, and building purchases. Beginning in 1975, GSA started charging rent and the rent receipts were deposited into the FBF. As actually enacted, however, the FBF is subject to yearly Congressional action (in the form of appropriations bills) that placed annual limits on expenditures. Further, the FBF never lived up to expectations for providing adequate funding for major capital investments.

As early as 1980, GAO wrote:

The Federal Buildings Fund was established in 1972 to finance the General Services Administration's acquisition and operations of Government owned and leased buildings. To date, the Fund has not accomplished the two primary objectives used as a basis for its establishment. It has not generated sufficient revenues for construction because it has experienced a cash flow problem since its inception. Concerning the second objective, there is no evidence of appreciable improvement in space usage because tenant agencies have to budget and pay for the space they occupy.³

GAO continued to document the issues related to the FBF for the next 24 years. In 1990, GAO noted, for example:

More and more tenant agencies and their congressional supporters are perceiving their space as well as GSA's facilities management program to be detrimental to their mission accomplishment and are attempting to go it alone. Out of frustration, they are chipping away at GSA's public buildings

³ *GSA's Federal Buildings Fund 'Fails To Meet Primary Objectives*, December 11, 1981, B-204688.

authority... Although the Federal Buildings Fund was set up to provide revenues for capital investment, it has largely failed to do so. Between 1975 and 1988, for example, the Fund generated an average of only \$97 million per year (in constant 1988 dollars) for construction and acquisition. The inadequacy of this funding level is apparent when it is compared to the estimated \$3 billion in funding required to construct the 20 buildings GSA wants to initiate between fiscal years 1991 and 1993.⁴

And again, in a report in 1992, GAO told Congress:

The growing realization that the Federal Buildings Fund has failed to meet its original expectations has resulted in a gradual withdrawal of support for the concept. Not only has the Pentagon been removed from GSA's custody, in addition Congress has authorized other agencies such as the Securities and Exchange Commission to renovate or lease their own buildings...In addition, Senator Moynihan has recently introduced S.2067, a bill which would abolish the Federal Buildings Fund and return the financing of all of GSA's building operating and capital costs to the regular appropriations process.⁵

In a 1993 report, GAO found a number of obstacles that "... inhibit the government's ability to acquire and manage real property mission assets in a more cost-effective, businesslike manner. . . ." Among the obstacles listed are "... GSA's monopoly in providing office space and its preoccupation with day-to-day real property operations . . . [and] Federal Buildings Fund shortfalls. . . ."⁶

Also, in 1993, GAO told Congress:

While federal agencies' rent payments have provided a relatively stable, predictable source of revenue for the FBF, that revenue has not been sufficient to finance both growing capital investment needs and the costs of leased space . . . The cumulative shortfall in the funds available for needed capital investment also may be attributable at least in part to the FBF's design . . . Thus, there is little assurance that the FBF revenues resulting from commercially-based rents will be adequate for federal capital

⁴ *The Disinvestment in Federal Office Space*, March 20, 1990 Statement of L. Nye Stevens, Director Government Business Operations Issues, General Government Division, Before the Subcommittee on Water Resources, Transportation and Infrastructure Committee on Environment and Public Works, United States Senate, GAO/T-GGD-90-24.

⁵ *DOD Rental Payments to GSA*, Statement of L. Nye Stevens, Director Government Business Operations Issues, General Government Division, Before the Subcommittee on Readiness, Committee on Armed Services, House of Representatives, April 8, 1992.

⁶ Testimony Before the Subcommittee on Oversight of Government Management Committee on Governmental Affairs, U. S. Senate, July 27, 1993.

investment purposes. This could occur, but it would be by happenstance, not by design. . . .⁷

It appears from these GAO reports that there are major systemic problems with the Federal Buildings Fund that need to be addressed. The judiciary has a responsibility to use its scarce resources to directly administer justice rather than to support a system GAO has found is not working as planned. In deciding how best to meet its responsibility, both the judiciary and the Congress should examine the least costly way (both in terms of the judiciary's operating budget and costs to the American taxpayer) in which the critical space needs of the judiciary can be met, both now and in the future.

What we are proposing at this time is similar to what GSA agreed to do over 15 years ago. At that time, the then-Administrator of GSA Terry Golden and I signed a Memorandum of Understanding, to become effective in fiscal year 1990, which foreshadowed what we recently asked Administrator Perry to do. Administrator Golden devised an arrangement whereby the judiciary's rent would be divided into two accounts. One would reimburse GSA for the actual direct costs of operating courthouses – not the “appraisal” or estimated costs – and the other would be used to build new courthouses or to renovate existing ones. When the second account was insufficient to pay for everything that was needed in a given year, we agreed to ask Congress for direct appropriations specifically to construct new, and modernize existing, courthouses. Mr. Golden left GSA shortly after signing the agreement and we understand that the Office of Management and Budget directed GSA not to implement the agreement. The difference between our current request and the agreement with Administrator Golden is that we are currently proposing to pay GSA only the direct operating costs for existing buildings and to ask Congress in the future for direct appropriations for all new construction and major renovation projects needed.

We do not wish to get into the real property or building business. Our preference is to continue to use GSA to manage our real property inventory – despite our concerns about management of specific projects – **if** we can resolve this rent predicament satisfactorily. Alternatively, we could contract with another qualified federal agency, or even with another outside suitable source. But I must also say that if we cannot reach a resolution with the Executive Branch, which has refused to grant us rental relief, we **must** ask the Congress for that relief.

In summary, we believe, as reflected in GAO reports, that the Federal Buildings Fund does not accomplish the purposes for which it was created. That is why we welcome GAO's current examination of the effectiveness of the fund requested by this Committee. Perhaps the FBF works well for some Executive Branch agencies. But, especially in these times of ever-tightening budgets, the judiciary cannot afford the current system.

⁷ *GAO letter to The Honorable Carl Levin Chairman, Subcommittee on Oversight of Government Management Committee on Governmental Affairs, United States Senate, The Honorable William S. Cohen Ranking Minority Member, Subcommittee on Oversight of Government Management, B-252914, April 5, 1993.*

Members of the Subcommittee, thank you for providing me with the opportunity to discuss our budgetary situation with you today. I would be pleased to answer any questions you might have.

HOW THE JUDICIARY BUDGETS FOR ITS NEEDS

There are three general categories of requirements that the judiciary takes into account when formulating its budget request: (1) requirements that are legislatively mandated and controlled; (2) requirements that are driven primarily by outside forces over which the judiciary has no control, and these requirements are determined by workload-driven formulas; and (3) requirements that the judiciary has more discretion in determining.

The first component includes requirements for new judgeships, the delivery of new courthouse space, and other legislatively-mandated requirements. Although the judiciary plays a role in recommending the creation of new judgeships and the building of new courthouses, the actual accomplishment of these activities is achieved through the legislative process. Consequently, funding requirements for new judges and new courthouse space is driven by the judicial confirmation and authorization processes, respectively. Judges' salaries and benefits costs and space rental costs comprise 24 percent of the judiciary's fiscal year 2006 budget request for the *Courts of Appeals, District Courts, and Other Judicial Services*.

The second component encompasses operating expenses associated with judges and chambers staff; defender services; petit and grand jurors; the costs of court support staff, probation and pretrial services officers; and associated operating costs needed to process the cases presented to the courts. Within this component, the courts are responding to workload driven primarily by the activities of other federal law enforcement agencies. In formulating many of these requirements, the judiciary uses objective, scientifically-derived formulas to directly link resource requirements to workload requirements. For example, if workload for probation and pretrial services is projected to increase, the formulas for staffing and operating costs would result in a request for additional resources. Similarly, if workload is expected to decrease, the formulas for staffing and operating costs would result in fewer resource requirements. The judiciary updates these formulas on a regular basis to recognize efficiencies achieved through improved automated processes and other workplace efficiencies. These activities combined comprise nearly 62 percent of the fiscal year 2006 budget request for the *Courts of Appeals, District Courts, and Other Judicial Services*.

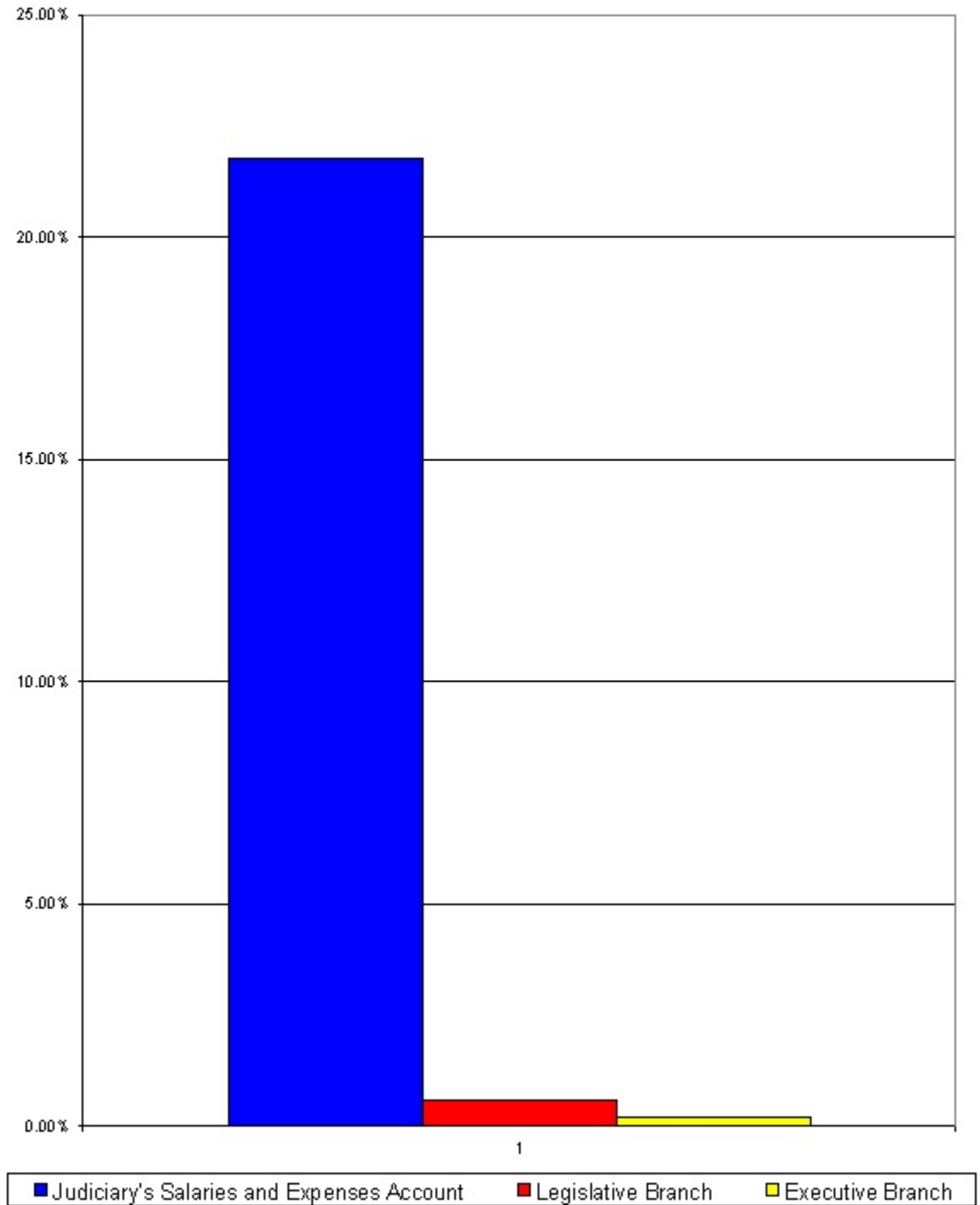
The third component includes all other requirements that provide direct support for the operations of the courts. This includes information technology, court security, and library services. These activities account for approximately 14 percent of the fiscal year 2006 budget request for the *Courts of Appeals, District Courts, and Other Judicial Services*. While this component accounts for a small percentage of the judiciary's budget, it receives a significant amount of scrutiny within the judiciary. For example, the judiciary hires outside consultants on a periodic basis to independently evaluate the courts' financial and operational requirements and identify areas for improvements and efficiencies. While Congress has directed that some of these studies be undertaken, more often it is the judiciary that initiates the reviews. The judiciary continues to look for efficiencies and savings in order to constrain resource requirements.

One additional component that impacts the judiciary's appropriation requirements is the ability to use non-appropriated sources of funding to augment its appropriations from Congress. This includes filing fees paid to the courts for processing cases as well as unobligated funds, or "savings,"

that can be carried forward from one fiscal year to the next. Every dollar in non-appropriated funding that is available reduces our appropriation request by a dollar. The judiciary encourages court staff and program managers to defer discretionary spending as much as possible in order to maximize the availability of these funds to mitigate appropriation requirements in the following year. The judiciary includes an estimate of non-appropriated funding in its budget request to Congress each February.

After the budget is submitted to Congress in February, the judiciary provides the Appropriations Committees with periodic budget re-estimates that incorporate the most current workload factors and fee and carryforward projections.

GSA Rent as a Percentage of the FY 2004 Budget



FY 2004 Rent Cost Comparison (in millions)

	FY 2004 Actual GSA Rent Obligations²	FY 2004 Agency Non- GSA Rent Cost³	FY 2004 Agency Gross Obligations³	GSA Rent as Percentage of Budget
Judiciary's Salaries and Expenses Account ¹	\$ 912	\$ 24	\$ 4,191	21.76%
Legislative Branch	\$ 27	\$ 9	\$ 4,850	0.56%
Executive Branch	\$ 6,231	\$ 1,995	\$ 3,282,091	0.19%
Total	\$ 7,170	\$ 2,028	\$ 3,291,132	0.22%

GSA Rent as a Percentage of the Judiciary's Salaries and Expenses Account	
FY 2009	FY 2015
24%	27%

FY 2004 Rent Cost Comparison for Selected Executive Branch Agencies (in millions)

Agency	FY 2004 Actual GSA Rent Obligations²	FY 2004 Agency Non- GSA Rent Cost³	FY 2004 Agency Gross Obligations³	GSA Rent as Percentage of Budget
Department of Justice	\$ 1,049	\$ 47	\$ 34,208	3.07%
Department of Homeland Security	\$ 758	\$ 85	\$ 44,214	1.71%
Department of Treasury	\$ 754	\$ 1	\$ 398,694	0.19%
Social Security Administration	\$ 494	\$ 2	\$ 560,717	0.09%
Department of Health and Human Services	\$ 324	\$ 25	\$ 701,752	0.05%
Department of Defense	\$ 285	\$ 1,004	\$ 611,799	0.05%
Department of Interior	\$ 271	\$ 44	\$ 19,943	1.36%
Environmental Protection Agency	\$ 212	\$ 6	\$ 10,157	2.09%
Department of Commerce	\$ 211	\$ 44	\$ 8,787	2.40%
Department of Agriculture	\$ 191	\$ 98	\$ 100,655	0.19%
Department of Transportation	\$ 170	\$ 91	\$ 71,304	0.24%
Department of State	\$ 166	\$ 214	\$ 15,566	1.07%
Department of Labor	\$ 146	\$ 8	\$ 67,956	0.21%
Department of Veterans Affairs	\$ 137	\$ 103	\$ 69,974	0.20%
Department of Housing and Urban Development	\$ 108	\$ 4	\$ 49,117	0.22%
Department of Energy	\$ 92	\$ 4	\$ 32,488	0.28%
General Services Administration	\$ 83	\$ -	\$ 22,494	0.37%
Department of Education	\$ 57	\$ -	\$ 77,548	0.07%
Small Business Administration	\$ 43	\$ -	\$ 4,628	0.93%
Total	\$ 5,551	\$ 1,780	\$ 2,902,001	0.19%

¹GSA rent represents 22 percent of the judiciary's Salaries and Expenses account. This account funds all expenses of the appellate courts, district courts, bankruptcy courts, and probation and pretrial offices and represents over 75 percent of all spending in the judicial branch. GSA rent is 15.69 percent for the entire judicial branch, which includes the Salaries and Expenses account and other judiciary accounts such as Defender Services, the Supreme Court, the Sentencing Commission,

²Source: From InfoWizard, a GSA rent database. FY 2004 amounts include Federal Protective Service Charges.

³Source: United States Budget.

**Owned and Leased Office Area by Agency Within the United States
September 2003¹**

Agency	Owned Office Area		Leased Office Area		Total Office Area	
	Square feet	Percent	Square feet	Percent	Square feet	Percent of total office area
General Services Administration	206,021,206	56.77%	156,892,440	43.23%	362,913,646	45.5%
United States Postal Service	152,082,529	97.73%	3,538,756	2.27%	155,621,285	19.5%
Army	83,850,193	100.00%	0	0.00%	83,850,193	10.5%
Air Force	51,231,150	99.96%	21,735	0.04%	51,252,885	6.4%
Navy	48,090,519	98.99%	490,117	1.01%	48,580,636	6.1%
Agriculture	5,397,209	28.68%	13,422,682	71.32%	18,819,891	2.4%
Energy	17,593,666	96.44%	648,857	3.56%	18,242,523	2.3%
Interior	8,100,075	79.14%	2,135,365	20.86%	10,235,440	1.3%
Veterans Affairs	9,112,433	92.95%	690,979	7.05%	9,803,412	1.2%
Nat. Aeronautics & Space Administration	7,881,073	99.67%	26,212	0.33%	7,907,285	1.0%
Defense (Pentagon Headquarters)	7,543,360	100.00%	0	0.00%	7,543,360	0.9%
Health and Human Services	3,875,656	70.27%	1,639,797	29.73%	5,515,453	0.7%
Homeland Security	3,764,979	72.96%	1,395,234	27.04%	5,160,213	0.6%
Corps of Engineers	2,554,066	87.47%	365,703	12.53%	2,919,769	0.4%
Treasury	1,094,872	44.29%	1,377,237	55.71%	2,472,109	0.3%
Transportation	659,588	41.57%	927,195	58.43%	1,586,783	0.2%
Tennessee Valley Authority	1,409,232	100.00%	0	0.00%	1,409,232	0.2%
Commerce	994,213	75.83%	316,825	24.17%	1,311,038	0.2%
Justice	133,282	13.90%	825,787	86.10%	959,069	0.1%
Government Printing Office	304,700	90.15%	33,305	9.85%	338,005	0.0%
Independent Government Offices ²	0	0.00%	246,097	100.00%	246,097	0.0%
Smithsonian ³	0	0.00%	233,683	100.00%	233,683	0.0%
National Science Foundation	121,106	63.47%	69,694	36.53%	190,800	0.0%
Federal Communications Commission	5,420	12.96%	36,397	87.04%	41,817	0.0%
Labor	23,812	100.00%	0	0.00%	23,812	0.0%
State	22,998	100.00%	0	0.00%	22,998	0.0%
Environmental Protection Agency	16,875	96.02%	700	3.98%	17,575	0.0%
American Battle Monuments Commission	0	0.00%	14,000	100.00%	14,000	0.0%
Total	611,884,212	76.75%	185,348,797	23.25%	797,233,009	100.0%
Percent of Total Office Area	76.8%		23.2%		100.0%	100.0%

Source: *Federal Real Property Profile as of September 30, 2003* (website visited April 16, 2004), http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annua_%20Report_%20FY2003-R2-ogp_R2M-n11_0Z5RDZ-i34K-pR.doc, p. 9. Please note: Department of Defense data for land, buildings and structures outside the United States is excluded from the table.

1. Additional agencies, including the Architect of the Capitol, have been identified as owning or leasing their own space since this report was produced.
2. Commodity Futures Trading Commission and Broadcasting Board of Governors.
3. The Smithsonian does not report its property as being owned, since it is held in trust.